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No. 92-1040

(3)

IN THE SUPREME COURT OF THE UNITED STATES

JAMES BARBER (9th Div.), FRED BRANDON (18th Div.), ALFONZO CAREY (18th Div.), BEATRICE DUNSTON (16th Div.), TIJUANA KNOX (1st Div.), WILLIAM S. MARTIN (9th Div.), MICHAEL C. McCLEARY (5th Div.), CHARLES E. MYERS (7th Div.), HARRY L. ROBINSON, JR. (8th Div.), DONITA B. ULMER (10th Div.), ESSIE M. WILLIAMS (5th Div.), ELSIE L. WIS (1st Div.), MEE JIN YOUK (8th Div.),

Petitioners,

v.

MICHAEL HORSEY, ROBERT BRADY, on behalf of PHILADELPHIA DEMOCRATIC COUNTY EXECUTIVE COMMITTEE, An Unincorporated Association,

Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

The core questions to which the Petition for Writ of Certiorari in this case addresses itself are more accurately stated as follows:

1. Does the political question doctrine as articulated in O'Brien v. Brown apply to make the instant internal political party dispute nonjusticiable?

2. Assuming *arguendo* that federal courts could intervene into the internal affairs of political parties, does the conduct of a local ward leader in a ward leadership election constitute state or governmental action for purposes of the First and Fourteenth Amendments or Section 1983 of the Federal Civil Rights Act?

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STATUTES INVOLVED IN THE CASE

The sole statute, the interpretation of which is implicated in this Petition, is codified at 42 U.S.C. §1983 and provided, in full text, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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No. 92-1040

IN THE
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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF THE CASE

A. Statement of Procedural History.

Petitioners, James Barber, Fred Brandon, Alfonzo Z. Carey, Beatrice Dunston, William S. Martin, Michael C. McCleary, Charles E. Myers, Harry L. Robinson, Jr., Donita B. Ulmer, Essie M. Williams, Elsie L. Wils, and Mee Jin Youk, filed their Complaint on July 3, 1991. In their Complaint, the Petitioners claimed a violation of the First and Fourteenth Amendments of the United States Constitution and of the Federal Civil Rights Act codified at 42 U.S.C. § 1983 (West 1981).

Respondents Michael Horsey and Robert Brady on behalf of the Democratic County Executive Committee of Philadelphia moved to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6), arguing that the predicate conduct in the election for ward officers did not constitute "state action" within the meaning of Section 1983. On August 21, 1991, Petitioners filed their Opposition to the Motion to Dismiss, asserting that a decision of the Pennsylvania Supreme Court controlled the determination of this federal question. A Reply Brief and Sur-Reply followed.

By Order dated November 27, 1991, the District Court (Newcomer, J.) granted the Motion to Dismiss the action. In an unpublished opinion, the District Court explained that "the normal rule of party leaders in conducting internal affairs of their party ... does not make their party officers governmental offices or the filling of these offices state action."

On appeal, the United States Court of

Appeals for the Third Circuit affirmed the Order of Dismissal. Relying on Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965), the Third Circuit determined that federal law must be applied when deciding what constitutes "under color of state law" for purposes of Section 1983 and thereunder held that the Respondents herein did not act "under color of state law" when fulfilling their duties relating to an intra-party ward leader election. Petitioners then moved for a rehearing of the Order of the Panel dated July 16, 1992. On August 31, 1992, the Sur-Petition for Rehearing was denied and this Petition for a Writ of Certiorari ensued.

B. Counterstatement of Facts.

The pertinent facts hereunder are gleaned from the specific well-plead factual allegations in Petitioners' Complaint. This lawsuit arose out of a ward leadership dispute in the Sixth Ward of the Democratic Party in Philadelphia. Respondent Michael Horsey

currently is Democratic ward leader of the Sixth Ward. App. at R. 12. Petitioners are Democratic Party committeepersons within the Sixth Ward who were unsuccessful in wresting control of the Sixth Ward from Horsey. App. at R. 13.

On May 15, 1990, a Democratic primary election was held wherein Petitioners were elected ward committeepersons for the Sixth Ward in Philadelphia. App. at R. 13. On June 4, 1990, the Sixth Ward Executive Committee convened at a meeting wherein Respondent Horsey conducted an election for ward officers. App. at R. 15.

In their Complaint, Petitioners alleged that Respondent Horsey refused to permit the majority of the elected committeepersons, including Petitioners, to vote for ward officers in violation of Democratic Party Rules and the Pennsylvania Election Code. The Complaint further alleged that Horsey declared himself ward leader of the Sixth Democratic Ward without

a vote and appointed other ward officers by "fiat" in violation of the Democratic Party Rules and Regulations. App. at R. 15-16.

Petitioners filed an appeal with the Democratic Party County Executive Committee regarding Horsey's claim to ward leadership. App. at R. 20. After a hearing, the Executive Committee accepted Respondent Horsey as ward leader of the Sixth Ward. App. at R. 22.

Nonetheless, Petitioners commenced the instant lawsuit, alleging that Respondent Horsey's conduct was action taken under color of state law because the Pennsylvania Election Code, 25 Pa. Cons. Stat. § 2837 (1963), incorporates the rules of the major political parties into state law and as such effected a deprivation of due process and a violation of Section 1983 allegedly by reason of state action. App. at R. 20.

LEGAL ARGUMENT

REASONS FOR DENYING THE WRIT

Petitioners appear to offer two reasons in support of their request that this Court issue a Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit in this case. The first is that in holding Respondents not to have acted under color of state law during an intra-party election for ward leadership, the Circuit Court either misapplied the reasoning of the Pennsylvania Supreme Court in Bentman v. The Seventh Ward Democratic Executive Committee, 421 Pa. 1988, 218 A.2d 261 (1966), or decided an important and unsettled question of federal law which warrants review by this Court. The second reason is that even if federal law governed, the Circuit Court erred in that it failed to adhere to numerous United States Supreme Court precedents, such as Nixon v. Herndon, 273 U.S. 536 (1927) and United States v. Classic, 313 U.S. 299 (1940), among others.

Respondents respectfully submit that neither of these proffered reasons provides adequate ground for the issuance of *certiorari* in this case. Indeed, Respondents submit that *certiorari* should be denied because this intra-party dispute is nonjusticiable as violative of the political question doctrine, and that even if justiciable, the alleged wrongful conduct of a local ward leader does not constitute state or governmental action under the First and Fourteenth Amendments of the United States Constitution or under Section 1983 of the Federal Civil Rights Act.

Finally, denial of the Writ is in no way obviated by cases such as Nixon v. Herndon, supra, or United States v. Classic, supra. Those cases, unlike the present action, involved claims of unconstitutional racial or geographic discrimination in the electoral process and therefore have no application to the case at bar. Conversely, this case, like Lynch v. Torquato, supra, involves an intra-party

political dispute without invidious racial or geographic discrimination.

1. The Instant Intra-Party Political Dispute Is Non-Justiciable Under The Political Question Doctrine.

It is a fundamental tenet of American jurisprudence that federal courts are not forums for the resolution of political disputes. Marbury v. Madison, 5 U.S. 137 (1 Cranch 1803). Indeed, the Court has decided as a matter of law that intra-party disputes constitute nonjusticiable political questions. O'Brien v. Brown, 409 U.S. 1 (1972).[1] Citing Lynch v. Torquato, 343 F.2d 370, the same case relied upon by the Third Circuit in affirming dismissal of Petitioners' Complaint in this case, the Court in O'Brien reasoned that federal courts may not undertake to interject themselves into the deliberative processes of political parties

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[1] In so holding, O'Brien altogether eliminates the need to engage in the five-part justiciability analysis otherwise required under Baker v. Carr, 369 U.S. 186 (1962).

because the issues presented would involve "relationships of great delicacy that are essentially political in nature." 409 U.S. at 5.

Similarly, the Court refused to permit any judicial intervention into the internal processes of political parties in Cousins v. Wigoda, 419 U.S. 477 (1975). There, certain delegates who were elected in a state primary election obtained a state court injunction precluding members of the Democratic Party from acting as delegates at the 1972 Democratic National Convention. The state court justified issuing the injunction on the ground that Illinois had a compelling interest in protecting the integrity of its electoral processes and the right of its citizens to effective suffrage. Notwithstanding the injunction, the Credentials Committee sat the disputed delegates at the National Convention on the ground that the elected delegates had been chosen in contravention of party guidelines. The Court

reversed the order granting an injunction, reasoning that the "convention itself [was] the proper forum for determining intra-party disputes as to which delegates [should] be seated." 419 U.S. at 491.[2]

The instant matter presents the classic nonjusticiable intra-party dispute. Petitioners contend that the election for ward leader held at the meeting of June 4, 1990 should be without legal force. Respondents assert, and the Democratic Executive Committee agreed, that the subject election results were valid.

As O'Brien and Cousins teach, the political party itself establishes the forum for the resolution of such internal party disputes. Here, the Democratic Executive Committee was that forum. It duly heard and rejected

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[2] The Court's continued adherence to the political question doctrine can be gleaned from its extension of the doctrine in Eu v. San Francisco Democratic Comm., 49 U.S. 214 (1989), to include state legislatures as other governmental bodies which are barred from dictating rules restricting or otherwise regulating the internal affairs of political parties.

Petitioners' claims. The decision of the Executive Committee is binding and federal courts may not substitute their decision for that of the proper forum or otherwise interfere in such intra-party political disputes.

In an apparent effort to escape this straightforward application of the controlling law, Petitioners discuss the importance of voting rights and decry the purported unstatesmanship of Respondents. Brief at 17-21. O'Brien does teach that voting rights are important for the internal management of political parties. 409 U.S. at 3. However, O'Brien also instructs that such rights do not outweigh the competing and compelling interest of political parties and their members in protecting the integrity of their internal affairs. Id. Additionally, Respondents submit that if the denial of voting rights at the national convention level were not sufficiently important to warrant an exception to the political question doctrine, see Cousins v.

Wigoda, supra, Petitioners' request for such exception at the local ward level is even less persuasive. Because the political question doctrine governs to render the instant matter nonjusticiable and Petitioners present no compelling reason for the nonapplication of the doctrine here, the Writ should be denied.

2. Even if the Instant Intra-Party Dispute Were Justiciable, the Predicate Conduct of a Local Ward Leader Does Not Constitute State or Governmental Action and Therefore the Complaint was Properly Dismissed.

Petitioners assert that the issue before the Court if *certiorari* were granted would be one of interpretation of state law incorporated into federal statute. Specifically, Petitioners maintain that the Pennsylvania Supreme Court's interpretation of "under color of state law" in Bentman v. Seventh Ward Democratic Executive Comm., 421 Pa. 188, 218 A.2d 261 (1966), should apply when deciding whether or not Respondents acted under color of state law during the election for Democratic

Party Ward Leader forming the basis of the instant lawsuit. Petition at ii. Contrary to Petitioners' assertion, this case, if at all justiciable, involves a pure question of federal law.

Wilson v. Garcia, 471 U.S. 261 (1985), an opinion of the Court which Petitioners insist[3] must be considered for a correct determination of the matter *sub judice*, is indeed dispositive of the general issue regarding whether federal or state law applies to claims arising under Section 1983 of the Federal Civil Rights Act.

In Garcia, the Court squarely held that federal law applies when deciding civil rights cases, notwithstanding state law to the contrary. Id. at 268. The Court there was faced with a situation not unlike here where a circuit court had decided a Section 1983 issue in a way which conflicted with a decision of a state's court of last resort. The Court of

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[3] Petition at 30-34.

Appeals in Garcia relied on federal law when deciding on the appropriate statute of limitations to apply in connection with a Section 1983 claim. In so doing, the Court of Appeals expressly refused to follow the decision of the New Mexico Supreme Court in DeVargas v. New Mexico, 97 N.M. 563, 564, 642 P.2d 166, 167 (1982), which applied a different (shorter) statute of limitations.

Finding the reasoning of the Court of Appeals' opinion "persuasive," this Court affirmed. 471 U.S. at 266. The Court discussed how civil rights claims under Section 1983 are governed by federal law thus:

> Our identification of the correct source of law properly begins with the text of § 1988 Congress' first instruction in the statute is that the law to be applied in adjudicating civil rights claims shall be in "conformity with the laws of the United States, so far as such laws are suitable." This mandate implies that resort to state law -- the second step in the process --

should not be undertaken before principles of federal law are exhausted. The characterization of § 1983 for statute of limitation purposes is derived from the elements of the cause of action, and Congress' purpose in providing it. These, of course, are matters of federal law. Since federal law is available to decide the question, the language of § 1988 directs that the matter of characterization should be treated as a federal question. Only the length of limitations period and closely related questions of totalling an application, are to be governed by state law. (emphasis added).

* * *

State law shall only apply "so far as the same is not inconsistent with federal law." This requirement emphasizes "the predominance of the federal interest" in the borrowing process, taken as a whole.

* * *

Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing

> the essential elements of a federal cause of action.
>
> In borrowing statutes of limitations for other federal claims, this Court has generally recognized that the problem of characterization is ultimately a question of federal law.
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> * * *
>
> The Court of Appeals was, therefore, correct in concluding that it was not bound by the New Mexico Supreme Court's holding in De Vargas.

471 U.S. 268-271.

The Court continued and further remarked that:

> The weight of federal authority is consistent with this view. (citations omitted). To the extent that federal courts have, on occasion, deferred to a state's characterization of a § 1983 for statute of limitation purposes, they have done so as a matter of

> deference or comity -- not obligation. [4]

471 U.S. at 270 n. 22.

Where, as here, the federal courts have been presented with cases involving political party disputes, they uniformly have applied federal law and have found no state action or no action under color of state law. See Banchy v. Republican Party of Hamilton County, 898 F.2d 1192 (6th Cir. 1990) (ward committeepersons' complaint that they were denied rights to participate in the election of their ward chairman held not to constitute a violation of Section 1983); Lynch v. Torquato, 343 F.2d 370, 372 (3d Cir. 1965) ("the normal rule of party leaders in conducting internal affairs of their party, other than primary or general elections, does not make their party offices governmental offices or the filling of

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[4] Petitioners suggest that the "borrowing" of the statute of limitations in Garcia is to be equated with the incorporation of state law interpretation into federal law. Petitioners misconceive the holding of Garcia. Garcia holds that "the law to be applied in adjudicating civil rights claims shall be in 'conformity with the laws of the United States'." 471 U.S. at 268.

these offices state action"); California Republican Party v. Mercier, 652 F. Supp. 928, 934 (C.D. Cal. 1986) (no state action involved in mailing of allegedly deceptive contained material in connection with the state party primary election); Jackson v. Michigan State Democratic Party, 593 F. Supp. 1033, 1045-6 (E.D. Mich. 1984) (held as a matter of law that plaintiffs had failed to state a claim under Section 1983 against the Michigan State Democratic Party where the basis of their action was a state statute which had nothing to do with the challenge to the selection of delegates to a political caucus); McMenamin v. Philadelphia County Democratic Executive Comm., 405 F. Supp. 988, 1003 (E.D. Pa. 1975) (held that the filling of a political party office is not state action or action under color of state law).

The great weight of persuasive authority notwithstanding, Petitioners assert that Bentman v. Seventh Ward Democratic Executive Committee, 421 Pa. 188, a decision of

the Pennsylvania Supreme Court interpreting the meaning of "under color of state law," governs the question at hand. In Bentman, the Pennsylvania Supreme Court held, without citation to any federal authority, that the internal affairs of a political party are of such concern to the public as to subject these affairs to the restraints placed on state actors by the United States Constitution. Id. In reaching its decision, the Bentman Court thus cavalierly disregarded principles of federal law, the predominance of the federal interest with regard to this issue, and the abundance of federal caselaw, including Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965).

Contrary to Petitioners' assertion, Garcia clearly applies[5] and requires that federal law, not state law, govern the question of whether or not a given conduct is "under color of state law" within the meaning of

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[5] Consequently, the lower courts in this case correctly applied the controlling federal law, not Bentman, in dismissing Petitioners' suit.

Section 1983. *A fortiori*, the Pennsylvania Supreme Court's decision in Bentman v. Seventh Ward Democratic Executive Comm., supra, is not controlling on the point and any apparent conflict between Bentman and the legion of federal court decisions applying federal law does not warrant review by this Court.

Petitioners persist and assert, albeit erroneously, that the Pennsylvania Supreme Court's opinion in Bentman was binding on the lower courts under the doctrine announced in Erie R.R. Co. v. Thompkins, 304 U.S. 64 (1938). One reading of Erie shows Petitioners' reliance thereon to be misplaced.

As the Court directed in Erie, federal courts generally are to apply substantive state law "[e]xcept on matters governed by the Federal Constitution or by Acts of Congress." 304 U.S. at 78. Plainly, by Erie's own language, the interpretation of the United States Constitution and Acts of Congress like Section 1983 of the Federal Civil Rights Act is a matter of federal

law only. Lynch and the long line of federal cases to the same effect interpreting "under color of state law" govern this dispute to ensure that the internal management of a political party does not become a justiciable controversy under Section 1983. The above analysis demonstrates that the application of Erie in no way changes the outcome of the case. The lower courts thus properly accorded no precedential value to the Pennsylvania Supreme Court's interpretation of "under color of state law" in Bentman. See, Wilson v. Garcia, 471 U.S. 261.

Finally, Petitioners maintain in the alternative that even if federal law were to apply, the lower courts erred by failing to follow certain precedents of this Court, to wit, Smith v. Allwright, 321 U.S. 649, reh'g denied 322 U.S. 769 (1944); Terry v. Adams, 345 U.S. 461, reh'g denied 345 U.S. 1003, (1953); American Party of Texas v. White, 415 U.S. 767 (1974); Moore v. Ogilvie, 394 U.S. 814 (1969);

Williams v. Rhodes, 393 U.S. 23 (1968); Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 73 (1932), cited with approval in Reitman v. Mulkey, 387 U.S. 369 (1967); Ray v. Blair, 343 U.S. 214 (1952). These cases are readily distinguishable.

As now Circuit Court Judge Higginbotham observed in McMenamin v. Philadelphia County Democratic Executive, 405 F. Supp at 1000, a case virtually identical to the instant matter:

> [T]his case ... does not involve claims of racial discrimination in primary or general elections. See, e.g., Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953); Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944); Nixon v. Condon, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984 (1932); Nixon v. Herndon, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759 (1926), and Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), cert. denied, 333 U.S. 875, 68 S.Ct. 905, 92 S.Ct. 2718, 34 L.Ed.2d 1 (1972). Nor does it involve the kind of geographical discrimination

> in the electoral process that the Supreme Court has, on numerous occasions, found unconstitutionally impermissible. See, e.g., Reynolds v. Sims, 377 U.S. 533, 566, 84 S.Ct. 1362, 1384, 12 L.Ed.2d 506 (1964); Gray v. Sanders, 372 U.S. 368, 381 83 S.Ct. 801, 809, 9 L.Ed.2d 821 (1963); cf. Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691 7L.Ed.2d 663 (1962).

See, also, O'Brien v. Brown, 409 U.S. at 5 n.1. Because the instant matter does not involve claims of racial or geographic discrimination, Nixon v. Herndon and other such cases relied upon by Petitioners are patently inapposite.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request that this Court deny the Writ of Certiorari.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I, STEPHEN J. SPRINGER, ESQUIRE, certify that on December 31, 1992, I caused a true and correct copy of the within **Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit** to be served by regular first class mail on:

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STEPHEN J. SPRINGER

Dated: December 31, 1992